

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Henry-Allen:Holdcroft,	:	
Plaintiff	:	Civil Action 2:05-cv-536
v.	:	Judge Marbley
Reginald A. Wilkinson, Director, Ohio Department of Rehabilitation and Correction, <i>et al.</i> ,	:	Magistrate Judge Abel
Defendants	:	

ORDER

Plaintiff Henry-allen:Holdcroft, a prisoner at the Ross Correctional Institution, brings this action under 42 U.S.C. § 1983 alleging that he has been exposed to second-hand smoke. This matter is before the Court on Holdcroft's objections to Magistrate Judge Abel's June 1, 2005 Initial Screening Report and Recommendation.

The Magistrate Judge recommended that defendants Reginald A. Wilkinson, Director, Ohio Department of Rehabilitation and Correction; Chief Inspector Cheryl Martinez; Assistant Chief Inspector Linda Coval; Institutional Inspector Robert Whitten ; Major Roger Hall; Captain Jackie Lacy; First Shift Captain Lawless; Captain Vaught; Captain Bain; Captain Price; Lt. Warrens; Sgt. Bell; Sgt Mal Corey; Sgt. Phil Taylor; Sgt. Greg Hughes; Sgt. Carol; C.O. Shannon Taylor; C.O. Barnett; C.O. William Hewitt; and Deputy Warden Carol Upchurch be dismissed from this lawsuit because the complaint fails to state a claim under 42 U.S.C. §1983 against them and because plaintiff has not exhausted his prison administrative grievance remedies as to his claims against them. He further recommended that the lawsuit continue as to plaintiff's claims against defendants Warden Pat Hurley, Deputy Warden Jeff Lisath, Unit

Manager Administrator Charlene Payne, and Unit Manager Consuella Henry.

Objections. Plaintiff does not object to these recommendations. Instead, he maintains that the Magistrate Judge should not have directed the Clerk of Court to mail a courtesy copy of the Report and Recommendation to the Ohio Attorney General. He states that the Attorney General is not a named defendant and asserts that the defendants are not entitled to representation by the Attorney General until the question of immunity is decided.

Decision. The Magistrate Judge ordered that the United States Marshal serve summons and complaint on all defendants. The Ohio Attorney General was not served with summons and complaint. The Clerk of Court merely mailed a courtesy copy of the complaint to the Ohio Attorney General so that he would have a copy of the complaint stamped with this Court's case number should a defendant request representation. This Court plays no role in determining whether the Ohio Attorney General will represent a defendant. If he does, the courtesy copy should facilitate defendants' counsel responding in a timely manner to the complaint so that plaintiff's claims can be adjudicated fairly and expeditiously. Accordingly, plaintiff's objections to the Report and Recommendation are **OVERRULED**.

The Court **ADOPTS** the Report and Recommendation. Defendants Reginald A. Wilkinson, Director, Ohio Department of Rehabilitation and Correction; Chief Inspector Cheryl Martinez; Assistant Chief Inspector Linda Coval; Institutional Inspector Robert Whitten ; Major Roger Hall; Captain Jackie Lacy; First Shift Captain Lawless; Captain Vaught; Captain Bain; Captain Price; Lt. Warrens; Sgt. Bell; Sgt Mal Corey; Sgt. Phil Taylor; Sgt. Greg Hughes; Sgt. Carol; C.O. Shannon Taylor; C.O. Barnett; C.O. William Hewitt; and Deputy Warden Carol Upchurch are **DISMISSED** from this lawsuit because the complaint fails to state a claim under

42 U.S.C. §1983 against them and because plaintiff has not exhausted his prison administrative grievance remedies as to his claims against them. The lawsuit will continue as to plaintiff's claims against defendants Warden Pat Hurley, Deputy Warden Jeff Lisath, Unit Manager Administrator Charlene Payne, and Unit Manager Consuella Henry. Those defendants are **ORDERED** to answer the complaint within 45 days of its being served on them.

s/Algenon L. Marbley
Algenon L. Marbley, Judge
United States District Court